



Federal Communications Commission
Washington, D.C. 20554

December 18, 2014

DA 14-1852

Rudolph J. Geist, Esq.
RJGLaw LLC
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Dear Mr. Geist:

On September 11, 2014, the Consortium for Public Education (CPE) filed a “Request for Enforcement Action and Expedited Review” (Request) with the Wireless Telecommunications Bureau, Broadband Division (Division).¹ In its Request, CPE asks the Division to use the Commission’s authority under Section 312 of the Communications Act of 1934 and Sections 1.80, 1.955, 1.9040(a)(1), and 1.905(c) of the Commission’s rules to terminate or invalidate the Long Term De Facto Lease Agreement (CPE-Sprint Lease) between CPE and Sprint Corporation (Sprint) for the use of the C-group Educational Broadband Service (EBS) channels in Pittsburgh, Pennsylvania.² CPE also asks the Division to invalidate other “offensive” provisions in the CPE-Sprint Lease and to clarify that the maximum lease term permitted under the Commission’s rules at the time the CPE-Sprint agreement was executed was 15 years.³ For the reasons stated below, we deny the request.⁴

We will treat CPE’s request as an informal request for Commission action filed pursuant to Section 1.41 of the Commission’s rules.⁵ The Commission has discretion whether or not to consider an informal objection.⁶ In this case, we conclude that the Request should not be considered because the Commission is not the appropriate forum for the relief CPE seeks.

¹ Consortium for Public Education, Request for Enforcement Action and Expedited Relief (filed Sep. 11, 2014) (Request).

² *Id.* at ii.

³ *Id.*

⁴ Sprint filed a request for an extension of time to respond to CPE’s Request. Sprint Corporation, Request for Extension of Time to Respond to Consortium for Public Education’s Request for Enforcement Action and Expedited Relief (filed Sept. 24, 2014). We find good cause for that unopposed request and grant the requested extension. Sprint filed its opposition on October 1, 2014. CPE also filed a reply to Sprint’s Opposition. Consortium for Public Education, Reply to Opposition of Sprint Corporation (filed Oct. 8, 2014). Sprint Corporation, Opposition of Sprint Corporation (filed Oct. 1, 2014). On November 14, 2014, Sprint submitted a letter purporting to update the Commission on the status of the civil litigation. See Letter from Marc Martin, K&L Gates LLP to Wireless Telecommunications Bureau, Federal Communications Commission (dated Nov. 14, 2014). CPE responded to that letter on November 21, 2014. See Letter from Rudolph J. Geist, Counsel for Consortium for Public Education to Federal Communications Commission, Wireless Telecommunications Bureau (filed Nov. 21, 2014).

⁵ See 47 C.F.R. § 1.41. Although CPE cites Section 312 of the Communications Act, which concerns revocation of authorizations, in its filing, the Commission does not recognize motions to revoke authorizations. See Danbury Cellular Telephone Company, Inc., *Memorandum Opinion and Order*, 6 FCC Rcd 4186 ¶ 3 (CCB MSD 1991).

⁶ See, e.g., Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 14021 n.335 (2005) (citing Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp., *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21547 n.196 (2004)).

After reviewing the documents submitted by the parties, including a complaint filed by Sprint in the Court of Common Pleas, Allegheny County, Pennsylvania concerning this matter, we conclude that this matter is a private contractual dispute between the parties that should be resolved in a civil court.⁷ Our decision here is consistent with prior Commission precedent where the Commission has consistently refused to become involved in private contractual matters that can best be resolved in a court of competent jurisdiction.⁸ The Commission has held that it “generally does not adjudicate private contractual disputes, but instead attempts to reach a fair accommodation between its exclusive authority over licensing matters and the authority of state and local courts through procedures that defer contractual matters to courts to decide under state and local law.”⁹ We see no reason to depart from that principle in this case.

We also note that the primary relief CPE seeks is for the Commission to issue a “determinative order that invalidates or terminates the lease at issue . . .”¹⁰ The Commission has held in the context of EBS leases that “we do not have the authority to void contracts executed by two private parties under the laws of individual states.”¹¹ To the extent CPE seeks termination of the lease or other contractual remedies, it should seek relief from the Court of Common Pleas or other court of competent jurisdiction.

To the extent CPE seeks the initiation of enforcement proceedings against Sprint, we note that most of the conduct it complains about occurred over one year ago. Accordingly, the initiation of forfeiture proceedings would be barred by the statute of limitations.¹² Furthermore, to the extent CPE complains about provisions in the lease, we see no reason to act prior to the development of a record in the civil proceeding. It would be an inefficient use of resources for both the Commission and the Court of Common Pleas to have proceedings on the same issues at the same time. We therefore deny the request to initiate enforcement proceedings or to refer this matter to the Enforcement Bureau.

We note that there are many factual disputes between CPE and Sprint. Since most of the issues raised by the parties are contractual in nature, we believe the Court of Common Pleas is in the best position to develop a record and make findings of fact concerning this matter. In denying CPE’s Request, we emphasize that we are not rejecting CPE’s factual allegations or accepting Sprint’s version of the facts. Our denial of the Request is without prejudice to either CPE or Sprint filing such requests for relief as they deem appropriate following the conclusion of the civil litigation.

⁷ Request at Attachment 4.

⁸ S.A. Dawson, *Memorandum Opinion and Order*, 17 FCC Rcd 472, 474 n.15 (WTB 2002) *citing* Airtouch Paging, Inc., *Order*, 14 FCC Rcd 9658 (WTB CWB P&RB 1999); *Listeners’ Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987). *See also* Antilles Wireless, L.L.C. d/b/a USA Digital, *Order on Reconsideration*, 24 FCC Rcd 4696, 4699 ¶ 8 (WTB 2009).

⁹ S.A. Dawson, *supra*, 17 FCC Rcd at 474 n.15.

¹⁰ Request at 1.

¹¹ *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 23 FCC Rcd 5992, 6044 ¶ 137 (2008).

¹² *See* 47 U.S.C. § 503(b)(6)(B).

For the reasons stated above, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 312 and Sections 1.41 of the Commission's rules, 47 C.F.R. § 1.41, that the Request for Enforcement Action and Expedited Review filed by the Consortium for Public Education on September 11, 2014 IS DENIED.

IT IS FURTHER ORDERED, pursuant to Section 1.46 of the Commission's Rules, that the Request for Extension of Time to Respond to Consortium for Public Education's Request for Enforcement Action and Expedited Relief filed on September 24, 2014 by Sprint Corporation IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

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